IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 590 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

PATEL DILIPKUMAR ISHWARBHAI SABBAVAS, SANAD DIST.A'BAD

Appearance:

MR B.Y. MANKAD, APP for Appellant

MR VIJAY H PATEL for Respondent No.1, 2, 3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 18/08/2000

ORAL JUDGEMENT

1. This appeal, under sec. 378 of Cr.P.Code, is preferred by the appellant State against the judgment and order dated 30.3.1992 passed by the learned Judicial Magistrate, First Class, Sanand in Criminal Case

No.690/1988 whereby the respondents accused came to be acquitted from the offences punishable under sec.323, 504, 114 of IPC and under sec.135 of Bombay Police Act.

2. That on the strength of complaint filed by one Rameshchandra Baldevbhai Patel of Sanand, an offence came to be registered against the respondents accused being CR No. II.56/88 at Sanand Police Station for the aforesaid offences. After investigation, police chargesheeted all the three respondents-accused for the above said offence and ultimately, at the conclusion of trial, learned Magistrate acquitted all the accused vide the judgment and order under challenge.

3. I have heard learned APP Mr. Mankad for the appellant. Mr. Mankad has taken me through the entire judgment rendered by the learned Magistrate, as well as through the depositions of injured witness P.W.1 Rameshbhai Baldevbhai (exh.31) and P.W.9 Dr. Ramanbhai Raijibhai Bharwad (exh.53). Mr. Mankad has argued that irrespective of other evidence available on record, learned Magistrate ought to have convicted at least accused nos. 2 & 3 for the offence punishable under sec.323 of IPC as the version of the complainant is corroborated by the medical evidence. He has also submitted that complainant Rameshchandra and accused no.3 were partners in the same firm and there was no reason for the complainant to file a false complaint involving his own partner. He has further submitted that there cannot be a case of mistaken identity and, therefore, this Court should hold that the finding of the learned Magistrate acquitting the accused nos. 2 & 3 is erroneous and requires to be reversed and both the accused should convicted and sentenced appropriately.

4. Mr. Vijay Patel, learned counsel for the respondents accused, has submitted that the finding of the learned Magistrate is based on detailed appreciation of evidence. It seems that some altercation or scuffle in between the partners has resulted into filing of a false complaint. FIR ought to have been filed at the earliest point of time. After appreciating oral version of the complainant Rameshchandra, learned Magistrate has reached the logical conclusion that it is not safe to accept the evidence of the complainant Rameshchandra in toto or as a gospel truth. Some of the important witnesses have not supported the case of prosecution and panchas have turned hostile. Undisputedly, this is a case of simple injury and there is no reference as to the age of injuries in medical certificate issued by the Medical Officer. This part seems to have been considered

by the learned Magistrate. Conflicting evidence as to the infliction of blows in the oral evidence led by the prosecution has rightly been appreciated by the learned Magistrate. After careful consideration of various set of facts considered by the learned Magistrate while recording acquittal, I am of the view that the findings of the learned Magistrate are based on proper appreciation of evidence and are in accordance with law. There is nothing on record by which it can be inferred that any legal or procedural error is committed by the learned Magistrate while appreciating the evidence led by the prosecution or at the time of recording acquittal. The prosecution has failed even in producing a notification published under sec.37(1) of the Bombay Police Act which might have been published by the District Magistrate. Non-availability of notification or lack of evidence as to its proper publication is sufficient to acquit the accused for the offence punishable under sec.135 of Bombay Police Act. Non-examination of independent witness is also correctly considered by the learned Magistrate. Undisputedly, because of some dispute as to the business dealings inter-se, some scuffle might have taken place amongst the partners and it is the duty of the prosecution to plead a specific case and to lead evidence to the satisfaction of the Court. Prosecution is bound to prove guilt beyond reasonable doubt and, in my opinion, the prosecution has failed in doing so in the instant case. Under the circumstances, the reasons given, findings arrived at by the learned Magistrate while acquitting the respondents accused being, just, legal, proper and in accordance with law and are arrived at by proper appreciation of evidence adduced, I am not inclined to interfere with the same. Needless to mention that after lapse of several years, when the impugned judgment of the learned Magistrate is based on legal and logical findings, it should not be reversed and Court should be slow in interfering with the order of acquittal. Hence, there is no substance in this appeal and it requires to be dismissed.

5. For the reasons aforesaid, appeal fails and is hereby dismissed. The impugned judgment and order dated 30.3.1992 passed by the learned Judicial Magistrate, First Class, Sanand in Criminal Case No.690/88 acquitting the respondents accused from the offences punishable under sections 323, 504, 114 of IPC and under sec.135 of Bombay Police Act, is hereby confirmed. Bail bonds/ personal bonds executed by the respondents accused stand discharged.

18.8.2000 [C.K. BUCH, J]
*rawal